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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/843,550
Filing Date: April 26, 2001
Appellant(s): BAMFORD ET AL.

Michael Glenn
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/28/07 appealing from the Office action
mailed 12/4/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

20040138966

KOPELMAN

7-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kopelman et al (US 2004/0138966 A1).

As for Claim 1, Kopelman et al discloses a method comprising:

receiving the electronic price request from the buyer, ([0038]-[0039], buyer expresses interest in buying the good, for example clicking a checkbox on a web site, and the marketer then presents the good at a sale price, in this case, since the price is unknown prior to the clicking of the box on the website, and the price is presented afterwards, this "clicking" [by way of computer] represents the electronic price request);

in response to the electronic price request, performing a computer-executed act of determining whether title to the goods passes directly from the manufacturer to the buyer or through an intermediate e-market place, ([0040], upon facilitating the sale transaction between the buyer and seller, it can be done through referral to an intermediary clearinghouse, or the escrow agent himself may itself act as the intermediary, also see [0043], lines 1-4, shows that goods in addition to those listed or registered for sale by sellers at a marketer's website in an e-market environment are also presented by the marketer for browsing by a buyer);

Providing the buyer with a machine-readable signal for displaying the computed price, ([0039], transmitting data for displaying the sale price of the good).

The following is obvious with Kopelman et al since settlements occur at a clearinghouse, and prices need to be computed/determined in order to settle. Also, since the title for the goods do not need to pass through the e-market when a buyer directly goes through the manufacturer, the computed price would differ:

computing a price of the goods to the buyer based at least partially on the determining act.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to compute a price of the goods to the buyer based at least partially on the determining act with the motivation of determining the price according to the method in which goods are accessed.

As for Claim 2, Kopelman et al further discloses the method wherein a first pricing regime is implemented when it is determined that title to the goods passes directly from the manufacturer to the buyer ([0040], escrow agent himself may itself act as the intermediary, it is inherent that a first price regime will be implemented since the regime is different than the regime used if the transaction went through an intermediary clearinghouse, also see [0043], where the manufacturer/marketeer has goods of his own for sale, it is inherent that a first price regime will be implemented since the regime is different than the regime used if the transaction went through goods registered by other sellers on the manufacturer's/marketeer's website).

As for Claim 3, Kopelman et al further discloses the method, wherein when it is

determined that title passes through an intermediate e-market place, the method further includes determining whether to implement the first pricing regime or a second pricing regime ([0040], upon facilitating the sale transaction between the buyer and seller, it can be done through referral to an intermediary clearinghouse, and is inherent to determine which pricing regime should be implemented since the transaction can also go through the escrow agent himself, which implements a different, or a second pricing regime, also see [0043], where a sales transaction can also occur through the e-market, and in this case, it is inherent to determine which pricing regime should be implemented since the transaction can also go through the manufacturer/marketer himself, which implements a different, or a second pricing regime).

As for Claim 4, Kopelman et al further discloses the method including the step of determining whether to discount a price ([0028], lines 1-8, discount).

As for Claim 5, Kopelman et al further discloses the method, wherein a discount is determined based on volume of a current order ([0028], lines 6-11, discount is determined based on whether book is used or paperback).

As for Claim 6, Kopelman et al does not specifically disclose the following:
further discloses the method, wherein a discount is determined based on: a stocking/handling charge;

But does disclose that in retail type sales on online websites, an inventory of goods is maintained, and when maintaining inventory, it is common to include a stocking/handling charge in the inventory art.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to determine a discount based in a stocking/handling charge with the motivation of allowing a reduced fee of an inventory of goods.

As for Claim 7, Kopelman et al further discloses the method including the step of determining whether to customize the price ([0040], upon facilitating the sale transaction between the buyer and seller, the marketer may refer the parties to an intermediary clearinghouse, or the escrow agent may itself act as the intermediary).

As for Claim 8, Kopelman et al further discloses the method, wherein the price is customized based on: geographic region, customer information, product line information, *manufacturer information* ([0040], upon facilitating the sale transaction between the buyer and seller, the marketer may refer the parties to an intermediary clearinghouse, or the escrow agent may itself act as the intermediary).

As Claim 9, Kopelman et al discloses a computer having logic programmable to execute method acts, method acts comprising:

receiving the electronic request from the buyer, ([0038]-[0039], buyer expresses interest in buying the good, for example clicking a checkbox on a web site, and the marketer then presents the good at a sale price, in this case, since the price is unknown prior to the clicking of the box on the website, and the price is presented afterwards, this "clicking" [by way of computer] represents the electronic price request); in response to the electronic request, determining whether title to the goods passes directly from the manufacturer to the buyer or through an intermediate e-market place ([0040], upon facilitating the sale transaction between the buyer and seller, it can be

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done through referral to an intermediary clearinghouse, or the escrow agent himself may itself act as the intermediary, also see [0043], lines 1-4, shows that goods in addition to those listed or registered for sale by sellers at a marketeer's website in an e-market environment are also presented by the marketer for browsing by a buyer);

Providing the buyer with a machine-readable signal for displaying the computed price, ([0039], transmitting data for displaying the sale price of the good).

The following is obvious with Kopelman et al since settlements occur at a clearinghouse, and prices need to be computed/determined in order to settle. Also, since the title for the goods do not need to pass through the e-market when a buyer directly goes through the manufacturer, the computed price would differ:

computing a price of the goods to the buyer based at least partially on the determining act.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to compute a price of the goods to the buyer based at least partially on the determining act with the motivation of determining the price according to the method in which goods are accessed.

As for Claim 10, Kopelman et al further discloses the logic, wherein a first pricing regime is implemented when it is determined that title to the goods passes directly from the manufacturer to the buyer ([0040], escrow agent himself may itself act as the intermediary, it is inherent that a first price regime will be implemented since the regime is different than the regime used if the transaction went through an intermediary clearinghouse, also see [0043], where the manufacturer/marketee has goods of his

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own for sale, it is inherent that a first price regime will be implemented since the regime is different than the regime used if the transaction went through goods registered by other sellers on the manufacturer's/marketeer's website).

As for Claim 11, Kopelman et al further discloses the computer, wherein when it is determined that title passes through an intermediate e-market place, the method further includes determining whether to implement the first pricing regime or a second pricing regime ([0040], upon facilitating the sale transaction between the buyer and seller, it can be done through referral to an intermediary clearinghouse, and is inherent to determine which pricing regime should be implemented since the transaction can also go through the escrow agent himself, which implements a different pricing regime, also see [0043], where a sales transaction can also occur through the e-market, and in this case, it is inherent to determine which pricing regime should be implemented since the transaction can also go through the manufacturer/marketer himself, which implements a different, or a second pricing regime).

As for Claim 12, Kopelman et al further discloses the logic programmable to determine whether to discount a price, ([0028], lines 1-8, discount).

As for Claim 13, Kopelman et al further discloses the logic, wherein a discount is determined based on volume of a current order ([0028], lines 6-11, discount is determined based on whether book is used or paperback).

As for Claim 14, Kopelman et al does not specifically disclose the following:

further discloses the method, wherein a discount is determined based on: a stocking/handling charge;

But does disclose that in retail type sales on online websites, an inventory of goods is maintained, and when maintaining inventory, it is common to include a stocking/handling charge in the inventory art.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to determine a discount based in a stocking/handling charge with the motivation of allowing a reduced fee of an inventory of goods.

As for Claim 15, Kopelman et al further discloses the logic programmable to determine whether to customize the price ([0040], upon facilitating the sale transaction between the buyer and seller, the marketer may refer the parties to an intermediary clearinghouse, or the escrow agent may itself act as the intermediary).

As for Claim 16, Kopelman et al further discloses the logic, wherein the price is customized based on: geographic region, customer information, product line information, *manufacturer information* ([0040], upon facilitating the sale transaction between the buyer and seller, the marketer may refer the parties to an intermediary clearinghouse, or the escrow agent may itself act as the intermediary).

As for Claim 17, Kopelman et al discloses a computer program product comprising:

computer readable code means for receiving the electronic price request from the buyer, ([0038]-[0039], buyer expresses interest in buying the good, for example clicking a checkbox on a web site, and the marketer then presents the good at a sale price, in this case, since the price is unknown prior to the clicking of the box on the

website, and the price is presented afterwards, this "clicking" [by way of computer] represents the electronic price request);

computer readable code means responsive to receiving the electronic price request for determining whether title to the goods passes directly from the manufacturer to the buyer or through an intermediate e-market place, ([0040], upon facilitating the sale transaction between the buyer and seller, it can be done through referral to an intermediary clearinghouse, or the escrow agent himself may itself act as the intermediary, also see [0043], lines 1-4, shows that goods in addition to those listed or registered for sale by sellers at a marketer's website in an e-market environment are also presented by the marketer for browsing by a buyer);

Computer readable code means for providing the buyer with a machine-readable signal for displaying the computed price, ([0039], transmitting data for displaying the sale price of the good).

The following is inherent with Kopelman et al since the system is directed towards electronic commerce applications, which are generally implemented on computerized systems, which need computer readable code to implement processing:

computer readable code

The following is obvious with Kopelman et al since settlements occur at a clearinghouse, and prices need to be computed/determined in order to settle. Also, since the title for the goods do not need to pass through the e-market when a buyer directly goes through the manufacturer, the computed price would differ:

computer readable code means for computing a price of the goods to the buyer

based at least partially on the determining;

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to compute a price of the goods to the buyer based at least partially on the determining act with the motivation of determining the price according to the method in which goods are accessed.

As for Claim 18, Kopelman et al further discloses the computer program product, wherein a first pricing regime is implemented when it is determined that title to the goods passes directly from the manufacturer to the buyer ([0040], escrow agent himself may itself act as the intermediary, it is inherent that a first price regime will be implemented since the regime is different than the regime used if the transaction went through an intermediary clearinghouse, also see [0043], where the manufacturer/marketeer has goods of his own for sale, it is inherent that a first price regime will be implemented since the regime is different than the regime used if the transaction went through goods registered by other sellers on the manufacturer's/marketeer's website).

As for Claim 19, Kopelman et al further discloses the computer program product, wherein when it is determined that title passes through an intermediate e-market place, the method further includes determining whether to implement the first pricing regime or a second pricing regime ([0040], upon facilitating the sale transaction between the buyer and seller, it can be done through referral to an intermediary clearinghouse, and is inherent to determine which pricing regime should be implemented since the transaction can also go through the escrow agent himself, which implements a different

pricing regime, also see [0043], where a sales transaction can also occur through the e-market, and in this case, it is inherent to determine which pricing regime should be implemented since the transaction can also go through the manufacturer/marketer himself, which implements a different, or a second pricing regime).

As for Claim 20, Kopelman et al further discloses the computer program product including the computer readable code means for determining whether to discount a price ([0028], lines 1-8, discount).

As for Claim 21, Walker et al. '636 further discloses the computer program product, wherein a discount is determined based on volume of a current order ([0028], lines 6-11, discount is determined based on whether book is used or paperback).

As for Claim 22, Kopelman et al does not specifically disclose the following:
further discloses the method, wherein a discount is determined based on: a stocking/handling charge;

But does disclose that in retail type sales on online websites, an inventory of goods is maintained, and when maintaining inventory, it is common to include a stocking/handling charge in the inventory art.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to determine a discount based in a stocking/handling charge with the motivation of allowing a reduced fee of an inventory of goods.

As for Claim 23, Kopelman et al further discloses the computer program product including the computer readable code means for determining whether to customize the price, ([0040], upon facilitating the sale transaction between the buyer and seller, the

marketeer may refer the parties to an intermediary clearinghouse, or the escrow agent may itself act as the intermediary).

As for Claim 24, Kopelman et al further discloses the computer program product, wherein the price is customized based on: geographic region, customer information, product line information, *manufacturer information*, ([0040], upon facilitating the sale transaction between the buyer and seller, the marketeer may refer the parties to an intermediary clearinghouse, or the escrow agent may itself act as the intermediary).

As for Claim 25, Kopelman et al discloses a data processing machine programmed to perform operations, the operations comprising:

receiving the request for quote/receiving from the buyer an electronic message comprising an RFQ, ([0038]-[0039], buyer expresses interest in buying the good, for example clicking a checkbox on a web site, and the marketeer then presents the good at a sale price, in this case, since the price is unknown prior to the clicking of the box on the website, and the price is presented afterwards, this "clicking" [by way of computer] represents the request for quote);

transmitting an electronic message representing a price of the goods to the buyer based at least partially on the determining step ([0039], transmitting data for displaying the sale price of the good).

The following is obvious with Kopelman et al since settlements occur at a clearinghouse, and prices need to be computed/determined in order to settle. Also, since the title for the goods do not need to pass through the e-market when a buyer directly goes through the manufacturer, the computed price would differ:

responsive to receiving the RFQ, determining a price of the goods based at least partially upon a manufacturer's specification as to whether title to the goods will pass directly from the manufacturer to the buyer or through an intermediate.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to determine the price of the goods to the buyer based at least partially on the manufacturer's specification with the motivation of determining the price according to the method in which goods are accessed.

(10) Response to Argument

As per claim 1, appellant argues that Kopelman fails to disclose the claimed combination including acts "in response to the electronic price request, performing a computer-executed act of determining whether title to the goods passes directly from the manufacturer to the buyer or through an intermediate e-market place". However, as stated in the rejection, [0040] of Kopelman discloses that upon facilitating the sale transaction between the buyer and seller, it can be done through referral to an intermediary clearinghouse, or the escrow agent himself may itself act as the intermediary. This example represents the determination that the title of goods pass through an intermediate e-market place, where the intermediary clearinghouse represents the intermediate e-market place. Also, in [0043], lines 1-4, Kopelman shows that goods in addition to those listed or registered for sale by sellers at a marketer's website in an e-market environment are also presented by the marketer for browsing by a buyer. In this case, the determination that the title of the goods passes directly from

the manufacturer to the buyer is represented by the determination that a buyer is utilizing the marketer's website to purchase goods.

In addition, appellant argues that Kopelman's disclosure fails to mention "title" even once, and argues that Kopelman mentions "clearinghouse" and "escrow agent", however argues that these definitions fail to suggest anything other than direct passage of title from seller to buyer, and that putting something into "custody" is not tantamount to transferring title. However, the specification does not provide any indication about the title. Furthermore, the claims do not define "title". Therefore, for the purposes of examination, the examiner takes the most broadest interpretation of "title, and interprets it as ownership. In addition, appellant did not specify the type of goods that are to be claimed. "Title" does not apply to every type of good, such as, a bicycle, for example, thereby making appellants arguments for "title" moot.

Appellant also argues that Kopelman lacks the claimed operation of "computing a price of the goods to the buyer based at least partially on the determining act" (i.e., the act of determining how title to goods passes) since, according to appellant, Kopelman fails to contemplate the passage of title or any effect of this on the price of goods to a buyer, and teaches away from the approach of considering title in setting the buyer's price. However, as described above the preceding paragraph with respect to "title", Kopelman discloses the title. In addition, the above features are obvious with Kopelman since settlements in Kopelman occur at a clearinghouse, and prices need to be computed/determined in order to settle, which would occur after it is determined that the goods would go through the clearinghouse.

Appellant also argues that Kopelman computes a price of goods before any price request from the buyer since the sale price has already been established. However, first, the buyer makes his request, then, the goods at the sale price are presented to the buyer as shown in [0038]-[0039]. This presentation of sale price therefore represents the computation of price, since this presentation occurs subsequent to the user's request. In addition, the price is to be displayed, and before it is actually displayed, some type of computation for the display of price must take place to retrieve the price from memory, and to present it on a particular display device. In addition, Figure 1 shows the determination of the index price after a request from a buyer. In Figure 1, first, the buyer expresses an interest in buying the book, then the index price is determined, which reads on what is claimed.

As per claims 9 and 17, appellant argues these claims for similar reasons as those of claim 1, and these claims are therefore rejected for the same reasons with respect to claim 1.

As per claim 25, appellant argues these claims for similar reasons as those of claim 1, and this claim is therefore rejected for the same reasons with respect to claim 1.

As per dependent claims 2-8, 10-16, and 18-24, these claims depend from claim 1, 9 and 17 respectively, and are rejected for the same reasons.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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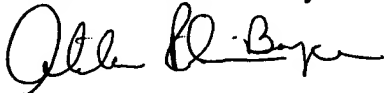
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Akiba Robinson-Boyce



Conferees:

John Hayes



Igor Borissov

